IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.378 OF 2005
IN
SUMMARY SUIT NO.1658 OF 2004

Vardhman Oil Corporation
(Prop.Rajesh N.Shah) ..Plaintiff

Vs.

Ahmed Oomerbhoy and Ors. ..Defendants

Mr.P.N.Ganwani i/b Zohair and Co. for the plaintiff

Mr.Sunil Pereira i/b Legal Associates for the defendant no.1

CORAM : S.U.KAMDAR, J
DATED : 13TH FEBRUARY, 2006

P.C.:

1. The present suit is filed for the recovery of sum of Rs.15,74,083/- in respect of goods sold and delivered. Admittedly, the firm is dissolved and the suit for dissolution is pending in this court. Court Receiver is appointed as Receiver in respect of all the assets of the said Partnership Firm being the defendants herein. By the earlier orders passed in the said suit for dissolution of accounts, Chartered Accountant was appointed to scrutinise the claim of the third party creditors

and if found due and payable then to make necessary payments thereof. The claim of the plaintiff was scrutinised by the Chartered Accountant and the Chartered Accountant has come to the conclusion that the plaintiff has not been able to establish the claim because he did not produce purchase orders. In so far as defendant firm is concerned, the accounts of the dissolved firm are yet to be taken.

2. The learned counsel for the plaintiff contends that I must independently examine the claim of plaintiff and pass necessary decree in the present suit. In my opinion in view of the fact that plaintiff was given an opportunity to establish his claim before the Chartered Accountant and having failed to do so before the Chartered Accountant, in my opinion, triable issue arises in the present suit. It is required to be determined and tried at the haring of the suit. Apart therefrom, the fact that the plaintiff did not produce purchase order itself indicates that there are disputed facts which are required to be tried.In that light of the matter, unconditional

leave to defend is granted.

3. Suit to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.